



FREDERICK COUNTY PLANNING COMMISSION

June 8, 2011

TITLE: New Cingular Wireless PCS LLC

FILE NUMBER: SP-91-25 (AP#'s 11618, 11505, 11506)

REQUEST: Site Plan Approval (Requesting approval for new communications tower in Agricultural zone)

PROJECT INFORMATION:

LOCATION: 7069 Boyers Mill Rd., east side of Boyers Mill Rd., 1/2 mile south of Gas House Pike
ZONE: Agricultural (Ag)
REGION: New Market Planning Region
WATER/SEWER: No Planned Service (NPS)
COMP. PLAN/LAND USE: Agricultural

APPLICANT/REPRESENTATIVES: (as applicable)

APPLICANT: New Cingular Wireless PCS LLC
OWNER: Dr. Chester Wagstaff
ENGINEER: Dewberry
ARCHITECT: N. A.
ATTORNEY: Greg Rapisarda, Esq., Saul Ewing

STAFF: Rick Brace, Principal Planner
Community Development Division

RECOMMENDATION: Conditional Approval

Attachments:

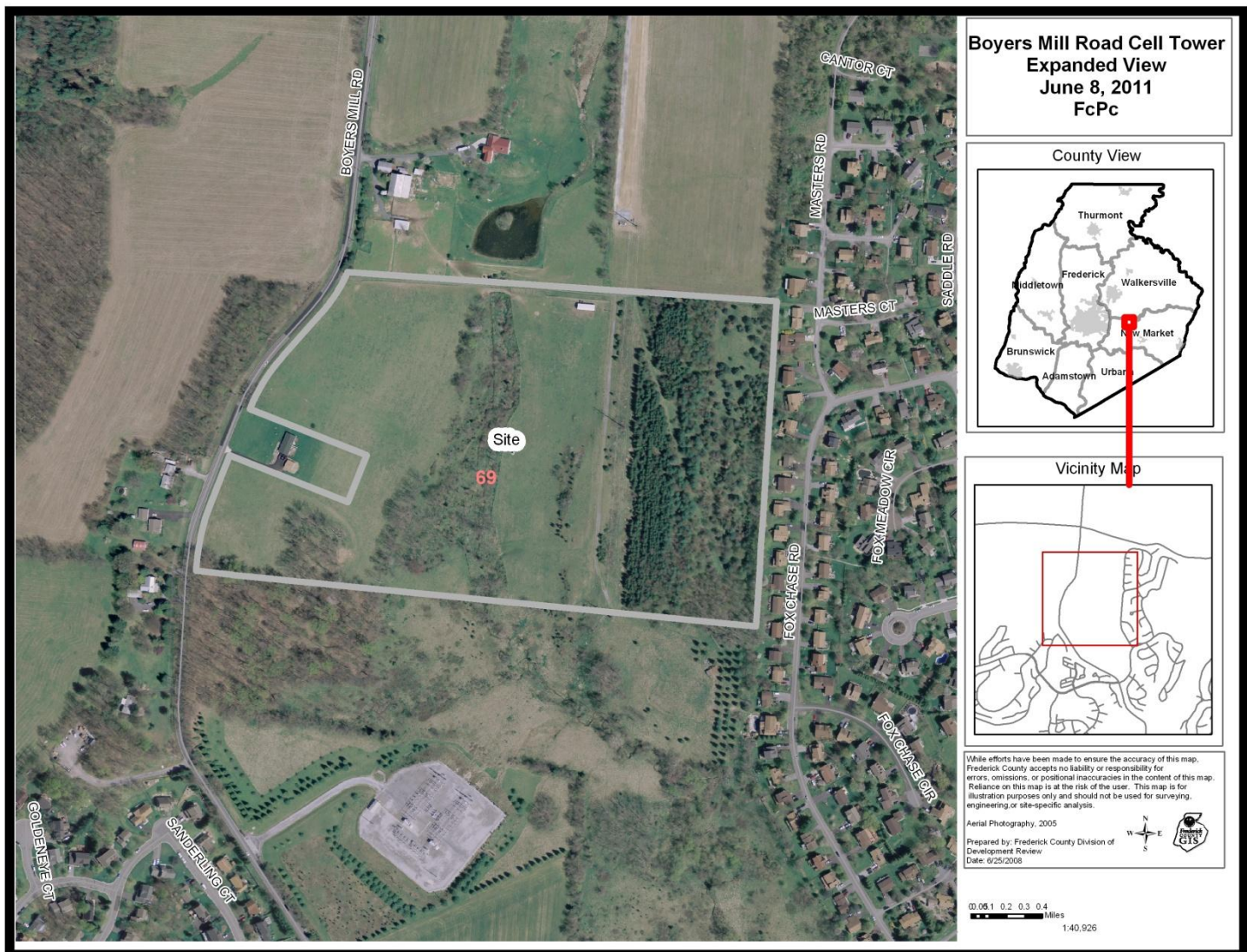
Exhibit #1: Site Plan Rendering
Exhibit #2: B-10-11 Findings & Decision

STAFF REPORT

BACKGROUND:

Previous Site Development: The Applicant proposes to erect a communications tower adjacent to the existing 235 kV line installed to support the existing substation to the south. Use of the existing power towers for antennas was not possible, according to testimony presented to the Board of Appeals, due to the structural integrity of the type of existing tower being designed for only the electrical transmission line, not the load that would result with antennas.

This Site Plan Application: The Applicant now requests Site Plan approval to build an un-manned 135' communications tower (and ground equipment) in the Agricultural zone, approved under a special exception granted by the Board of Appeals in case B-10-11 (attached). Lightning rod additions of 6' will cause the tower + antennae to be 141'. In addition, the Applicant proposes a small fenced enclosure (40' x 65') for the equipment shelter (12' x 20').



LAND USE, CIRCULATION, PARKING, DIMENSIONAL REQUIREMENTS & UTILITIES:

Land Use and Zoning Review: Communication towers in the Ag zone require Special Exception approval by the Board of Appeals (BOA). The BOA approved the special exception for this application on November 18, 2010h. Also, communications towers in the GC zone are subject to the requirements of § 1-19-8.420.2 of the Zoning Ordinance.

Access/Circulation, Parking Spaces, Loading Area and Road Frontage Improvements: The Applicant proposes access from Boyers Mill Road via an existing farm entrance now in use for the horses boarded and pastured on site. The Applicant also proposes no additional parking or loading spaces. Staff agrees that because of limited vehicle trips to the site for this particular use, no parking is needed. However, the Applicant shall need to coordinate the entrance improvements with the County planned improvements to Boyers Mill Rd.

Dimensional Requirements/ Bulk Standards: The standard dimensional and bulk requirements for communications towers in an Agricultural zone are as follows:

<i>Use Classification</i>	<i>Minimum Lot Area</i>	<i>Lot Width</i>	<i>Setback values</i>	<i>Height</i>
<i>Communications Tower</i>	N.A.	N.A.	§ 1-19-8.420.2 (2) <i>Setbacks from all properties zoned other than residential shall be determined by the approving body, but shall not be less than the fall zone of the tower as defined by the engineering specifications.</i>	§ 1-19-8.420.2. (D) <i>The tower height may exceed the maximum height permitted within the HS, GC, ORI, LI and GI Districts, and provided the required setbacks are met after a determination by the approving body that its visual profile and appearance would make no substantial change in the character of the area.</i>

With regard to setbacks, the Applicant has provided a letter on Sheet 02 of the Site Plan application demonstrating that the fall zone is 141 feet or less. The Applicant has provided a setback of 141' from the property line.

Utilities: The parcel is classified as No Planned Service. However, this site will not require water or sewer services because this will be an un-manned facility.

ENVIRONMENTAL ANALYSIS:

Open/Green Space and Floodplain Issues: There are no open or green space requirements in the Ag zone other than those noted above. Also, there are no hydrological or water buffer elements on this lease area.

Landscaping: In addition to the provisions of subsection 1-19-8.420.2 (F) "...screening and fencing may be required around the base of the tower structure and any equipment buildings...", there is a subsection in § 1-19-6.400 (B) (3): (Land Use Buffering) that pertains to this application: "All other uses: buffering and screening for all other land uses shall be determined by the Planning Commission.". The Applicant proposes American Holly shrubs/trees (3) and white pines (4) near the entrance to the site. The hollies are proposed to be planted at 3' height.

Storm-water Management (SWM) Design: This project was tested with regard to the requirements of the Maryland Stormwater Management Act of 2007 (SWM 2007), which became effective May 4, 2010. However, because the site disturbance is less than 5,000 sq. ft. an exemption is allowed for this site development plan.

Forest Resource Ordinance (FRO): There are no priority systems on site. FRO mitigation requirements have been satisfied by a forest fee-in-lieu payment.

MISCELLANEOUS DESIGN and ADMINISTRATIVE ISSUES:

Lighting: This tower will not require lighting, other than FAA emergency lighting requirements.

Signage: The Applicant proposes no signage with this application other than the six sq. ft. identification sign required by the Zoning Ordinance.

Fencing: The Applicant is providing a 6' board-on-board fence.

Guarantee: In accordance with §1-19-8.420.2(B), the Applicant must post an acceptable guarantee with the County on forms approved by the Zoning Administrator prior to permit release. The guarantee is to ensure proper removal of the tower if it ceases to be used for six months or more. The Applicant has noted their intent to execute this monetary guarantee but has not added this statement to the Site Plan.

Propagation Studies: As required by § 1-19-8.420.2 the Applicant has included propagation studies in the "Communications Tower Planning Commission Submittal" packet used by the Board of Appeals indicating *before* and *after* coverage information.

Photo-simulation Studies: As required by § 1-19-8.420.2, the Applicant has included photo-simulation in the "Communications Tower Planning Commission Submittal" packet showing *before* and *after* views from several vantage points.

ADEQUATE PUBLIC FACILITIES ORDINANCE (APFO):

In General: This project was reviewed for potential impacts on schools, water/sewer and roads. This project was determined to generate no impacts on schools, utilities or traffic.

- **Schools:** The non-residential nature of this project has no impact on schools.
- **Water and Sewer.** The un-manned operations will require no water or sewer facilities.
- **Traffic:** The traffic engineer has indicated that less than one peak-hour trip will be generated on this site and is therefore exempt.

Therefore, this project is exempt from APFO.

OTHER AGENCY COMMENTS:

Agency	Comment
Engineering Section, DPDR	Conditional Approval.
Planning Section	Conditional Approval
Traffic Engineering	Approved.
Life Safety, DPDR	Approved. Emergency Response Information: 1 st Responder: New Market 2 nd Responder:
Health Department	Conditional Approval (with no listed conditions).
DUSWM	Approved.

FINDINGS:

The Applicant is requesting approval of a Site Plan (AP # 11618) for a communications tower monopole 135' in height with a 6' extension for lightning rod and antennae extensions, and ground facilities.

Staff finds that the Site Plan application meets and/or will meet all applicable Zoning, Subdivision, APFO and FRO requirements once all Staff and Agency comments and conditions are met or mitigated. With certain conditions of approval added, the Staff offers no objection to approval.

- 1) Site Plan approval can be given for a three-year period from the date of FcPc approval.
- 2) This project is exempt from the APFO.
- 3) The Applicant must post an acceptable guarantee with the County on forms approved by the Zoning Administrator prior to permit release.

RECOMMENDATION:

Should the FcPc choose to approve this Site Plan application (AP # 11618), the Staff would recommend adding the following conditions to the approval:

Applicant shall:

- 1) Comply with Agency comments as this project moves through the development process.
- 2) Post an acceptable guarantee with the County on forms approved by the Zoning Administrator prior to permit release.
- 3) Provide annual update to the Zoning Administrator of emergency contact info for the tower owner and all carriers on tower.

Exhibit #1-Site Plan Rendering



Exhibit #2-Board of Appeals Findings & Decision Letter B-10-11

IN THE MATTER OF:	*	BEFORE THE
THE APPLICATION OF	*	BOARD OF APPEALS
New Cingular Wireless PCS	*	FOR FREDERICK COUNTY, MD
d/b/a AT&T Mobility, LLC	*	
c/o Greg Rapisarda, Saul	*	CASE NO. B-10-11
Ewing LLP	*	

* * * * *

FINDINGS AND DECISIONS

This matter comes before the Board on the application of New Cingular Wireless PCS d/b/a AT&T Mobility represented by Greg Rapisarda of Saul Ewing LLP (hereinafter "the Applicants") for a special exception as provided for in the Frederick County Code. The property (hereinafter "the Property") for which the special exception is sought is owned by Chester and Mary Jane Wagstaff and consists of a portion of 31 +/- acres of land, more or less, and is located on the east side of Boyers Mill Rd. approx. 1,900 ft. southeast of its intersection with Gas House Pike, zoned Agricultural (Ag). It is further identified as Lot 3A, Parcel 153 on Frederick County Tax Map No. 69. Applicant seeks a special exception under Section 1-19-3.210, 1-19-8.332 and 1-19-8.420 of the Frederick County Code in order to establish a 141 ft. high telecommunications monopole next to existing power towers and a 40 ft. x 65 ft. equipment compound at the base.

The Frederick County Code, Section 1-19-3.210 (B) provides that a special exception is a matter of development policy and that the Board of Appeals "should consider the relation of the proposed use to the existing and future development patterns." In addition, Section 1-19-3.210 provides that the following conditions must be met:

1. The proposed use is consistent with the purpose and intent of the Comprehensive Development Plan and of this chapter; and
2. The nature and intensity of the operations involved in or conducted in connection with it and the size of the site in relation to it are such that the proposed use will be in harmony with the appropriate and orderly development of the neighborhood in which it is located; and
3. Operations in connection with any special exception use will not be more objectionable to nearby properties by reason of noise, fumes, vibration, or other characteristics than would be the operations of any permitted use not requiring special exception approval; and
4. Parking areas will comply with the off street parking regulations of this chapter and will be screened from adjoining residential uses, and the entrance and exit drives shall be laid out so as to achieve maximum safety; and

5. The road system providing access to the proposed use is adequate to serve the site for the intended use; and
6. A written application is submitted; and
7. A public hearing has been held.

In addition, the proposed operation must meet the requirements of Section 1-19-8.332 and 8.420, as follows:

The following provisions shall apply to communication towers in RC and A Districts.

(A) The tower height may exceed the maximum height permitted within the RC and A Districts after a determination by the approving body that its visual profile and appearance would make no substantial change in the character of the area, provided, however, that in no event shall the maximum allowed tower height exceed 199 feet.

(B) All applications for a special exception shall include: _____

- (1) Computer modeling information used in selecting the site;
- (2) Listing of alternative sites considered and why not selected;
- (3) Photographs of the existing conditions of the site and area;
- (4) Photo documentation that a balloon test has taken place at the proposed site location.

(C) All applications for a tower shall be accompanied by a non-binding 5 year plan of the applicant or the locating provider, showing the existing and proposed communications network within the county.

(D) A NEPA (National Environmental Policy Act) checklist prepared in accordance with section 106 of NEPA shall be provided as part of all applications.

(E) The applicant must publicize the proposal, using a block advertisement of a size acceptable to staff, which includes a map showing the site and a 1 mile radius and must hold an informational meeting in the area of the tower within 2 weeks after submitting the application. Written notice of such meeting shall be provided to all abutting property owners of the property on which the site is located and any homeowners/community associations within the 1 mile radius.

(F) Setbacks for communications towers shall be as follows: setback from all property lines shall be a distance not less than 1 foot for every foot of tower height, but in no case less than 300 feet from any adjoining residential structure. This setback distance may be modified by the Board of Appeals.

(G) The zoning certificate issued for a special exception shall be valid for a period of 5 years from the date that the decision of the Board of Appeals is signed. This zoning certificate shall be renewed for additional 5 year periods after review by the Board of Appeals at a regular meeting. The following are the only grounds on which renewal of a certificate may be denied.

(1) The permittee has failed to comply with the conditions of the special exception approval.

(2) The facility has not been maintained in a safe condition.

(3) The Board of Appeals determines that the use of the tower for wireless communications has ceased for a period of 6 months.

(H) All special exception approvals must also comply with the requirements of § 1-19-8.420.2.

And Section 1-19-8.420:

The following design criteria shall apply to all communication towers in the HS, GC, ORI, LI, GI, MM and non-residential MXD zoning districts as well as special exceptions in the RC and A Districts.

(A) The applicant and the property owner shall be responsible for maintaining the tower in a safe condition.

(B) The tower shall be utilized continuously for wireless communications. In the event the tower ceases to be used for wireless communications for a period of 6 months, the approval will terminate. The property owner shall remove the tower within 90 days after termination. The property owner shall insure the tower removal by posting an acceptable monetary guarantee with the county on forms provided by the office of the Zoning Administrator. The guarantee shall be for an amount equal to a cost estimate approved by the Zoning Administrator for the removal of the tower, plus a 15% contingency.

(C) All towers shall be designed for co-location, which shall mean the ability of the structure to allow for the placement of antennae for 2 or more carriers. This provision may be waived by the approving body if it is determined that co-location will have an adverse impact on the surrounding area.

(D) The tower height may exceed the maximum height permitted within the HS, GC, ORI, LI and GI Districts, and provided the required setbacks are met after a determination by the approving body that its visual profile and appearance would make no substantial change in the character of the area.

(E) All applications for approval of communications towers shall include:

(1) Justification from the applicant as to why the site was selected;

(2) Propagation studies showing service area and system coverage in the county;

(3) Photo simulations of the tower and site, including equipment areas at the base from at least 2 directions and from a distance of no more than 1 mile.

(F) As part of the site plan review, screening and fencing may be required around the base of the tower structure and any equipment buildings.

(G) The appearance of the tower structure shall be minimized by the reasonable use of commercially available technology to reduce visual impact, with specific

reference to size, color and silhouette properties. The decision of the approving authority shall be final.

(H) No lighting is to be placed on the tower unless specifically required by the Federal Aviation Administration.

(I) Monopoles shall be the preferred tower structure type within the county.

(J) All tower sites shall be identified by means of a sign no larger than 6 square feet affixed to the equipment building or fence enclosure. Said sign shall identify the tower owner and each locating provider and shall provide the telephone number for a person to contact in the event of an emergency.

(K) Site plan approval for the tower, access, equipment, and structures shall be by the Planning Commission in accordance with the site plan regulations specified within the zoning ordinance.

(L) No towers are permitted within land designated or eligible for designation for National Register or Frederick County Historic Districts or Sites.

(M) A copy of all reports including the environmental assessment, NEPA review, and SHPO review, as required by or provided to the Federal Communications Commission, shall be included as part of the application.

(N) Towers should be sited within or adjacent to areas of mature vegetation and should be located down slope from ridge lines and towards the interior of a parcel whenever possible and only should be considered elsewhere on the property when technical data or aesthetic reasons indicate there is no other preferable location.

(O) All applications shall include information as to how the applicant has addressed the visual impact of the tower on all county designated preservation areas, such as: rural legacy areas, agricultural preservation areas, critical farms, Monocacy Scenic River, Appalachian Trail, historic sites and sites eligible for designation.

(P) Towers may be permitted within the Mineral Mining (MM) and non-residential Mixed Use Development (MXD) floating zones with the approval of the Planning Commission. Towers shall not be permitted within residential, PUD or residential MXD Districts.

(Q) Communications towers in existence on the effective date of this ordinance (Ord. 99-14-241) shall not be required to comply with these provisions, except in the event they increase the height.

(R) Except as provided in § 1-19-8.332(F) setbacks for communications towers shall be as follows.

(I) Setback from all property zoned residential shall be a distance not less than 1 foot for every foot of tower height, but in no case less than 300 feet. Setback distance may be modified by the approving body.

(2) Setbacks from all properties zoned other than residential shall be determined by the approving body, but shall not be less than the fall zone of the tower as defined by the engineering specifications.

At the Sept. 23, 2010 hearing, testimony was presented by Mr. Rick Brace, Principal Planner II for Frederick County, Mr. Larry Smith, Frederick County Zoning Administrator, the Applicants and residents in both verbal and written testimony.

In accordance with section 1-19-3.210(A), as noted in testimony, the proposed operation is consistent with the purpose and intent of the Comprehensive Development Plan in that the Board notes in Section 9-24 through 9-28 of the Comprehensive Plan are provisions for telecommunication towers in Frederick County. The Board further couples this with the provisions of the Code which require the nature and intensity of the special exception to be in harmony with the appropriate and orderly development of the neighborhood. The Frederick County Code provides that one of the principles of the agricultural zone is to preserve the character of the neighborhood and locating the proposed structure next to the existing power towers on this site does so. As was submitted by the applicant, engineering tests indicated use of the existing power towers for mounting of the proposed antennas was not feasible. Further, a water tank in the area was also found not sufficient to provide the necessary coverage.

The Board further finds that the placement of the operation at this location would not be objectionable to neighboring properties due to noise or vibrations and that its visual impacts are minimized by the location adjacent to the existing power towers on the tract. The 14 +/- acre wooded area located between the proposed site and some of the homes to the east are a voluntary wildlife stewardship effort by the property owner (exhibit #6, submitted). The Applicant indicated they would landscape around the equipment compound if allowed to do so.

The Board finds that the Application meets the all other requirements of Section 1-19-3.210 of the Zoning Ordinance.

The Applicant's concept plan shows the parking areas all comply with section 1-19-6.220 of the Zoning Ordinance. In addition, the concept plan indicates that the entrance and exit drives do not pose a risk to the safety of those utilizing the site, subject to review at the site plan stage. Furthermore, Staff testimony, Applicant's testimony and site plans identify the road system to the Property as an arterial road on the Comprehensive Plan, which the Board finds as adequate to serve the site for the proposed uses.

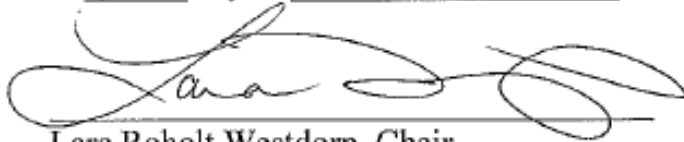
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The Board adopts as its findings the testimony and exhibits of the applicant as having met the specific criteria, Sec. 1-19-332 and 8.420.2, of the Zoning Ordinance.

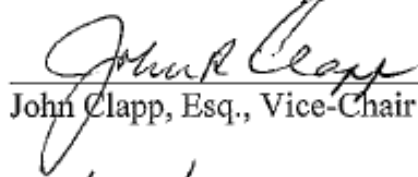
For all of the foregoing reasons, the Board of Appeals unanimously grants the Applicants request for a special exception, on a motion from Mr. Duke, seconded by Mr. Clapp, subject to the condition(s):

1. Applicant is to provide contact information to the Zoning Administrator on an annual basis.
2. Suggest to the Planning Commission to look at the addition of appropriate screening at the site plan stage.

Adopted by the Board of Appeals on the 18 day of November, 2010.



Lara Roholt Westdorp, Chair



John Clapp, Esq., Vice-Chair

absent

Sean Michalski, Member

absent

Alan Duke, Member



Carol Jaar Sepe, Member

Section 1-19-3.200 (J) A decision of the Board granting a variance or a special exception will be void two years from date of approval unless the use is established or a building permit is issued and construction has begun and is in accordance with the terms of the decision.